

Appl. No. 10/735,239  
Amdt. Dated June 5, 2006  
Reply to Office Action of January 10, 2006

### **REMARKS/ARGUMENTS**

An Extension of Time Request to be charged to applicant's undersigned attorney's Deposit Account No. 04-1255 is attached. In addition, the added \$100 fee for independent claims in excess of three should also be charged to applicant attorney's Deposit Account No. 04-1255 should it be decided that withdrawn Claim 13 is still counted as an independent claim in totaling the number of such claims.

Applicant hereby confirms the species election made in this application, that is, the species shown in Figs. 15 – 19. Claims 1 – 6 are asserted to be generic in that they set forth the basic invention as are newly added Claims 15 – 19. Claims 8, 11, 12 and 17 read directly on the elected species setting forth the specific combination locking-tactile slide feature.

The outstanding Office Action asserts non-patentability on an obvious basis utilizing three levels of prior art references for Claims 1 – 4 and 6 and four levels of prior art references for Claims 5, 8, 11 and 12. Claim 1 has been amended to emphasize the elongated configuration of the package, that is, one in which the top and bottom edges are shorter in length than the elongated side edges so as to emphasize a traditional cosmetic purse theme. This subject matter is fully supported by the Specification (see Line 10, Page 4; Line 3, Page 3) and the drawings and has

been recognized by the Examiner when referring to the difference between longitudinal side edges and top and bottom edges, etc.

Referring to the applied rejection and initially the Dobreski patent, such patent is not truly a purse and display package as indicated by the Examiner but merely part of a system of dispensing deli goods where the clerk reaches over to a pile of bags, places some cold cuts, etc. therein and then seals the open longitudinal edge. The clerk then rips the filled bag off the bag stack along its other longitudinal edge. The bags are not mounted to display the contents. The bags are simply mounted for dispensing the individual bags from a stacked pile thereof, and such bag pile is usually mounted flat on the counter. Thus, a key feature of applicant's invention; that is, that of mounting the filled package from an extension of the top edge thereof, is absent. The Examiner applies Sill in an attempt to bridge the gap between Dobreski which does not show this feature and several tertiary references which show package suspension in a vertical attitude, that is, from a top location of the package but not on a tear away extension thereof. The Examiner cites Sill as teaching moving the extension panel to different locations on the package. Sill, however, clearly only teaches moving the extension panel from one longitudinal side to another longitudinal side. This is not the general teaching of moving the panel to wherever one wishes as the Examiner implies but a specific limited teaching of placing holes in either of the two longitudinal edges.

This three-layer combination of prior art patents still misses the above indicated key feature of applicant's invention—that of putting a suspension hole in the top extension and thereafter tearing such away to form a package with the closure along one of the longitudinal sides. Dobreski shows tearing a panel from one of the longitudinal sides, but the panel is not a display package. Sill shows switching a panel between either of the longitudinal sides; and Schneider et al, Kaldenbaugh and Van Erden show top suspension with a longitudinal side closure but no tear away of the top extension. Thus despite three layers of references, there is no teaching of a key feature of the invention—that of providing a display package with a suspension opening in a top panel which is then torn away or otherwise removed to form a purse/package with a longitudinal side closure. Additionally, there is no suggestion or reason set forth in any of these cited patents that the referenced patents could be combined in the fashion asserted, e.g., why would Dobreski want to mount from a narrow top when he is inserting material from an open long side and why would Sill, which disclosure is essentially the same as Dobreski, want to do such? In fact, Dobreski and Sill would not and do not.

In light thereof, it is asserted that the structure of Claims 1 – 4 and 6 are not met by the combination of references and, additionally, there is no logical reason to attempt such a combination except in the teaching light of applicant's

Appl. No. 10/735,239  
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disclosure. Allowance of Claims 1 – 4 and 6 along with Claim 5 which includes a secondary closure feature and dependent on Claim 1 is urged.

Turning now to Claims 8, 11 and 12, the above three-layer application of references was applied with the addition of Cappel thus arriving at a four layer combination; and when considering the observations of the Examiner relating to Cappel, even a five-layer rejection. At some point, the house of cards has to collapse. Patent devotees know there are few totally new inventions and that most inventions are combinations of known components assembled in a different fashion to arrive at a different result. The undersigned patent devotee believes the subject application is such an invention and urges the Examiner to look at such rejection based on so many layers of patents and reconsider that when so many multiple patent layers have to be combined—then it is more likely that this subject invention is really unobvious and that patent protection should be granted. This is especially true when in the present case, there is no glue to stick these combined references together except for applicant's disclosure.

From a more specific viewpoint, the Cappel structure does not inherently contain a material ridge, crater, etc. that is expressly indicated as present in applicant's claims and which provides a secondary tactile closure feedback feature. Cappel is also silent about such a tactile closure feedback feature. Applicant's invention has this ridge, crater, etc. extending from the upper surface of one of the

Appl. No. 10/735,239  
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panels, and the formation method is secondary. Whether or not such a constructional feature would be formed, of course, depends to a great extent on the materials from which the layers are formed, their thickness and the like. Thus even if Cappel used the same tool as applicant utilizes, it is possible that no ridge would be formed; however and more importantly, Cappel is a very speculative disclosure when applied to the present invention as no tool is mentioned and why the Examiner formed the impression that a somewhat sharpened tool was used has no basis in Cappel and is a purely speculative conclusion which applicant asserts is more likely false. In this regard, note that in Figs. 5a-d, Cappel mentions a hole 52 which extends through the slider. This is presumably the same type hole as in Figs. 6a-d. The slider body is quite thick, and it seems logical that this slider hole 52 could not be formed by a tool with a moderately sharpened end as suggested by the Examiner. It is believed more likely that the hole in the slider 52 is post drilled or even molded in situ or even pierced with a hot pointed tool although admittedly this is conjecture based on the undersigned attorney's past experiences. The point is that when a reference does not have ridges, craters, etc. or does not mention them, the only reason to place them there is in light of applicant's discussion in his Specification that never states that all somewhat pointed tools will produce ridges in all materials and thicknesses thereof. Applicant merely is telling the reader how ridges, craters, etc. are formed in the device disclosed. In the present case since Cappel refers to a hole in

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circumstances in which it is clearly unlikely that the hole could be formed by a somewhat sharpened tool (hole 52 through slider 32), it would be logical to assume that the hole in other embodiments is formed in the same manner (more likely drilling) or Cappel simply does not care how the hole is formed and thus has no interest in ridges, craters except possibly to avoid them. Also in referring to the pin 50 with regard to Figs. 6a-d, Cappel indicates or strongly implies that the hole is already formed.

Applicant uses or at least in the Specification suggests the use of polyvinyl sheet which by necessity to function as a purse would be quite thick, e.g., 5 – 10 mils. It is unlikely any of the cited references would use PVC plastic as a construction material since they are all associated with food packaging and would more likely use a much thinner, e.g., .5 – 1 mil, polyethylene.

In light of the above, it is believed Cappel does not teach or even hint at the existence or use of ridges, craters, etc. for the purpose for which applicant's ridges are present. It is believed Claims 8, 11 and 12 are allowable over the outstanding rejection, and their allowance is urged.

Claims 15 – 19 have been added to more clearly cover the merchandizing system that is clearly indicated by the provision and use of the package. Claims 15 – 18 are generic, and Claim 19 is directed to the elected species. None of the patents or any of the patent combinations suggest this novel sales system

Appl. No. 10/735,239  
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as set forth in these added claims and as disclosed in the application through the description of the novel container and its intended use by the buying public when viewing such on a store display hook.

It is therefore believed that all claims as presently written are in a form ready for allowance; however, should claim language modification occur to the Examiner, such would be welcomed to advance this application. Allowance of the claims at bar in this application is urged.

Respectfully submitted,

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